

ESTTA Tracking number: **ESTTA10512**

Filing date: **06/22/2004**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Ace Duraflo Systems, LLC
Granted to Date of previous extension	08/08/2004
Address	Ace Duraflo Systems, LLC 711 W. Kimberly Avenue Suite 100 Placentia, CA 92870 UNITED STATES

Attorney information	Jeff C. Risher RUTAN & TUCKER, LLP 611 Anton Blvd., Suite 1400 Costa Mesa, CA 92626 UNITED STATES jrisher@rutan.com, dharbottle@rutan.com Phone:(714) 338-1853
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Applicant Information

Application No	78245632	Publication date	02/10/2004
Opposition Filing Date	06/22/2004	Opposition Period Ends	08/08/2004
Applicant	CURAFLO TECHNOLOGIES INC.		

Goods/Services Affected by Opposition

Class 040. First Use: 20010312 First Use In Commerce: 20010312

All goods and services in the class are opposed, namely: Lining of inside of pipes to prevent corrosion and cure leaks, a diagnostic service on water pipes to determine pipe strength and water flow characteristics

Curaflo Technologies, Inc. v. Ace DuraFlo Systems, LLC, United States District Court, Western District of Washington, Case No. CV03-1214P

Attachments	Opposition_CURAFLO.txt (2 pages)
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Signature	/jeff risher/
Name	Jeff C. Risher
Date	06/22/2004

Ace Duraflo Systems, LLC ("Opposer"), a Nevada limited liability company, whose business address is 711 W. Kimberly Avenue, Suite 100, Placentia, CA 92870, UNITED STATES, hereby opposes registration of the mark CURAFLO (Serial Number 78/245632) in International Class 40, as applied for by Curaflo Technologies, Inc. ("Applicant"), which application was published for opposition in the Official Gazette on February 10, 2004.

As grounds for opposition, it is alleged that:

1. Opposer is a Nevada limited liability company having a principal place of business in California.

2. On information and belief, Applicant is a British Columbia corporation having its principal office at 202-6200 Darnley Street, Burnaby, British Columbia, CANADA V5B 3B1, Canada and/or 502-595 Howe Street Vancouver, British Columbia CANADA V6C 2T5.

3. Opposer is the exclusive licensee of the ACE DURAFLO mark, U.S. Trademark Registration No. 2,484,383, in the United States. The ACE DURAFLO mark is registered in, among others, International Class 40 for "the treatment of materials, namely the mechanical cleaning and treatment of pipes and tubes for the purpose of repair, restoration, renovation and preservation of such installations." The registration for the ACE DURAFLO mark is valid and subsisting, and Opposer has been using the mark ACE DURAFLO in connection with the goods and services identified therein, including cleaning and repairing piping systems, continuously since at least as early as 1999.

4. Through substantial expenditures of time, money, labor and other efforts to develop and market goods and services under the ACE DURAFLO Mark, Opposer has created a distinctive means of identifying itself as the source of the goods and services offered under the the ACE DURAFLO Mark. Opposer has established substantial public recognition and usage of the ACE DURAFLO Mark, which symbolizes Opposer's valuable goodwill. Opposer has both common law and statutory rights in the ACE DURAFLO Mark.

5. The pending CURAFLO mark, as applied for by Applicant, is likely to be confused with Opposer's mark ACE DURAFLO, which Opposer has been using prior to Applicant's alleged first use. Opposer's first use of the mark ACE DURAFLO dates as early as May 1999, while Applicant's first use of its confusingly similar mark is reported as March 2001. Hence, Applicant is not entitled to adopt, use or seek registration of its mark based upon well established trademark principles set forth in the Lanham Act, which states that priority of similar or confusing marks goes to the first user of the mark.

6. Applicant's mark CURAFLO is sufficiently similar to Opposer's mark ACE DURAFLO in sight, connotation, pronunciation, and commercial impression that use of the respective marks will create a likelihood of confusion among members of the trade and public.

7. The services described in Applicant's application are of the same nature as those services offered by Opposer, such that the trade and purchasing public would reasonably anticipate that such services would

originate from the same source. In fact, Applicant now competes directly with Opposer in the marketplace for cleaning and lining piping systems in commercial and residential structures.

8. Applicant and Opposer both market, advertise and undertake promotional activities concerning the serviced provided under their respective marks through the same channels, including without limitation the internet, trade shows, direct mailings and magazine advertisements.

9. Applicant competes for business in the same geographic markets as

Opposer throughout the United States, including without limitation California, Florida, Texas, Maryland, Virginia and West Virginia.

10. Applicant was aware of Opposer's ACE DURAFLO at the time that Applicant selected the mark CURAFLO, and Opposer is informed and believes that Applicant did so to capitalize on the similarities in sight, sound and connotation between the marks and to exploit a likelihood of confusion with Opposer's senior mark.

11. Because Applicant's and Opposer's services are extremely similar

and compete directly in the marketplace, and are offered and provided through similar channels of trade to the same types of customers in the same geographic markets, and because Applicant's CURAFLO mark, which was selected after Opposer's ACE DURAFLO mark, is substantially similar in sight, connotation, pronunciation, and commercial impression to ACE DURAFLO, any problems or lack of quality of service on behalf of Applicant will reflect adversely on Opposer and its established goodwill and reputation, unless this opposition is sustained.

12. Applicant's use of the CURAFLO mark will dilute or impair Opposer's rights, and will eventually result in a loss of distinctiveness and exclusivity of Opposer's mark. Confusion and mistake by members of the trade and public will occur, and indeed has already occurred, as between Opposer's and Applicant's marks and as to the origin of similar services, with resulting damage to Opposer. Thus, this Opposition should be sustained.

WHEREFORE, Opposer respectfully requests that this Opposition be sustained and that the registration of Applicant's mark CURAFLO (Serial No. 78/245632) be refused.